SUPREME COURT, U. S.
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No. 73-116

In the Supreme Court of the United States

OCTOBER TERM, 1973

RALPH D. ROCKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 481 F. 2d 112. The opinion of the district court (Pet. App. B) is reported at 339 F. Supp. 249.

JURISDICTION

The judgment of the court of appeals was entered on June 14, 1973. The petition for a writ of certiorari

was filed on July 13, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals erred in declining to certify certain allegedly unresolved issues of Maryland law to the highest court of that State.

2. Whether petitioner's criminal enterprise involved sufficient interstate activity to violate the Travel Act, 18 U.S.C. 1952.

3. Whether petitioner's right to cross-examination was violated because the trial judge, during a post-trial evidentiary hearing, undertook to question the jurors himself as to whether an allegedly prejudicial newspaper article had come to the attention of any of them during their deliberations.

4. Whether the evidence was sufficient to support the district court's finding that the newspaper article in question had not been read by any of the jurors prior to the verdict.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted of using interstate facilities with intent to promote bribery, in violation of 18 U.S.C. 1952. He was sentenced to imprisonment for a term of fifteen months and ordered to pay a $10,000 fine and court costs. The court of appeals affirmed (Pet. App. A).

The evidence showed that petitioner, a well-to-do builder and real estate entrepreneur, had developed various areas of land in Virginia and Maryland (Tr. 67). He owned several corporations, the most important of which were Rocks Engineering Company, Inc. and Allen and Rocks, Inc., both having offices in the District of Columbia. Between 1962 and 1968 petitioner filed numerous zoning applications in Prince George's County, Maryland. Typically, he would seek rezoning of his property to a higher density and then develop the land or resell it at a substantial profit. These zoning applications were ultimately ruled upon by the Prince George's Board of County Commissioners, which had final authority over all zoning matters.[1]

In early December 1964, petitioner's co-defendant, James S. Baggett,[2] became the Chairman of the Board of County Commissioners (the "Board") (Tr. 470). Baggett had first joined the Board in 1954 (Tr. 471) and by December 1964 was an influential member of a majority block of Commissioners (Tr. 472, 936-939, 950-951, 1054-1057, 1149, 1158-1159, 1216-1217, 2007-2008, 2015-2017). The government adduced evi-

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[1] Zoning Ordinance for the Maryland-Washington Regional District in Prince George's County, Maryland, as amended through December 1964, §§ 30.21, 30.41 (1965).

[2] After a severance, Baggett was tried (before petitioner) in the United States District for the District of Maryland. He was convicted, the court of appeals affirmed, 481 F.2d 114, and he has sought review by this Court, No. 73-348. Petitioner's case was transferred to the Eastern District of Virginia because of the publicity generated by Baggett's trial.

dence to show that, pursuant to a long-term corrupt agreement, petitioner gave a series of gifts to Baggett in return for expeditious approval of zoning applications, and that other participants in this scheme were William Kahler, petitioner's attorney and a partner in most of his real estate ventures (Tr. 455, 524, 525, 699, 740, 804; G. Ex. 266), and William Stevens, appointed in 1963, through Baggett's recommendation, as Chairman of the Maryland National Park and Planning Commission, the body with whom zoning applications were first filed and which made recommendations to the Board prior to final rulings (Tr. 835-838, 841-846, 1122-1130).

In early December 1964, Baggett asked an acquaintance named Louis Fiedler for advice on a new tractor which he said a "friend" of his wanted to purchase. Fiedler suggested a John Deere agricultural tractor, which he reported could be bought for $3,500 at the Ungar Equipment Company in Maryland (Tr. 109-110, 167). On December 20, 1964, Baggett went with Fiedler to inspect the tractor. On December 23, 1964, just three weeks after Baggett had become Chairman of the Board, petitioner wrote out a Rocks Engineering Company check payable to the Ungar Equipment Company in the amount of $3,500. Although the government was unable to document the precise means by which the interstate movement of this check (the subject of the indictment) was accomplished, the evidence was clear that the check was delivered to Baggett across interstate lines. Thus, at the time petitioner signed the check he was

in one of his offices in the District of Columbia; three days later, on December 26, Baggett appeared at the Ungar Equipment Company in Harwood, Maryland, and used the check to purchase the tractor that Fiedler had recommended. Baggett asked that the tractor be invoiced to Rocks Engineering Company but instructed that it be delivered to his own farm in Calvert County, Maryland (Tr. 110-113, 169-172). The tractor was delivered to Baggett's farm in early January 1965, and remained there until May 1968,[3] when Baggett returned it to petitioner after learning

[3] A married couple working as tenant farmers testified that the tractor never left the farm between its delivery in January 1965 and the date of their departure in April 1965 (Tr. 2810-2830, 2853-2857); a college student, who lived on the farm for three summers (1965-1968) and on frequent weekend visits during the school year used the tractor to plow snow, testified that, except for one occasion when the tractor had to be repaired, he could recall no time when it was absent (Tr. 1226-1231, 1234, 1237, 1247, 1252-1253, 1257, 1261); a sales manager at the Ungar Equipment Company produced business records showing that the tractor had been repaired for Baggett in July 1967 (Tr. 186-189, 247-248; cf. Tr. 141, 153, 183-186). At least six other government witnesses provided testimony placing the tractor on Baggett's farm between January 1965 and May 1968 (Tr. 113, 115, 150, 247-248, 253-255, 2915, 2917, 2944-2945; cf. Tr. 118-120, 190-195, 1236-1237, 1268-1270).

Several witnesses for the defense, all petitioner's employees, expressed belief that the tractor in question was on petitioner's construction sites for substantial periods of time between 1965 and 1968. Although arguing in the court of appeals that the tractor was "apparently" used by both petitioner and Baggett during these years (Appellant's Motion to Certify Unresolved Questions of Maryland Law, p. 8), the defense did not attempt to explain how or why the tractor might have been sent back and forth between Baggett's farm and petitioner's projects.

that the Internal Revenue Service had discovered the transaction (Tr. 1263-1265, 1280-1294, 2916).[4]

Between 1963 and 1967 petitioner, at his own expense, took Baggett, Stevens, and Kahler on two vacations to Florida and another to Florida and the Bahamas (Tr. 407, 612-621, 644-645, 877-878, 882-890). On three other occasions Kahler paid for the expenses of Baggett and Stevens when he went with them to Miami Beach (Tr. 557, 585-589, 857-859, 872-881).[5] Significantly, though Stevens knew petitioner and Kahler before becoming Chairman of the Park and Planning Commission, he was not invited to join them on vacations until he assumed that office, and he received no further invitations after his term expired in June 1966 (Tr. 573, 644-645, 676, 816, 819-820, 895). Stevens admitted that no other zoning applicants or their attorneys treated him to vaca-

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[4] Evidently trying to make the purchase of the tractor appear to be a normal business acquisition, petitioner depreciated the tractor on the federal income tax return of his engineering company between 1964 and 1968 (Tr. 1299-1300). The invoice for the tractor was never placed in the regular construction equipment files of the company, which was unable to produce documentation of the transaction when requested to do so by the Internal Revenue Service (Tr. 290-293, 328, 345-346, 387).

[5] Whether petitioner and Kahler paid for all of these trips was disputed at trial. The government produced business records proving that they paid for three trips. Although Kahler testified that he could not remember who financed the other trips (Tr. 556-557, 586, 630-631), there was substantial non-documentary evidence that he and petitioner had paid all expenses (Tr. 407, 858-862, 874-875, 890, 905-907, 1007-1008, 1863-1868, 1884-1888).

tions during his tenure and that Baggett was the only County Commissioner with whom he had ever vacationed (Tr. 917-918). Moreover, while petitioner took frequent trips to Florida with social and business friends, he never invited his three zoning associates to join him on those occasions, but rather kept the two traveling groups separate and distinct (Tr. 1863-1866, 1884-1888).

Petitioner and Kahler provided various other benefits to Baggett and Stevens. On November 18, 1964, about a month before the purchase of the tractor, Kahler gave Baggett $1,000 (Tr. 591-608). Though Kahler called this transfer a loan, there was no evidence of indebtedness, and the money was repaid only after the Internal Revenue Service inquired about the transaction (Tr. 591-608). Kahler also loaned Stevens $500 in 1963 (Tr. 954).[6] In early 1965 petitioner and Kahler met with James Casey, a prominent county politician, and offered to raise $170,000 for the gubernatorial candidate whom Casey was supporting in the upcoming 1966 elections; in exchange, they wanted to name three of the five candidates for County Commissioner who would run on Casey's slate (Tr. 1135-1152). It was understood that one of the candidates would be Baggett, with whom Casey discussed the matter (Tr. 1145). Finally, in the fall of 1965, petitioner gave Baggett new furniture and carpeting worth about $5,600 (G. Ex. 304, 316).[7]

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[6] Kahler denied that petitioner knew of these two transactions (Tr. 777).

[7] These furnishings had been acquired by petitioner for use in a model apartment in one of his projects (Tr. 1486-1572). By prearrangement, Baggett moved into the apartment in De-

The government produced evidence to show that these various benefits were given and received with the intent that Baggett and Stevens would expedite the approval of petitioner's zoning applications. At the time of Stevens' appointment to the Park and Planning Commission, he was instructed by Baggett, who had discussed the need for speedier processing with Kahler, to try to shorten the lengthy delays which generally caused expense and inconvenience to real-estate developers (Tr. 466, 837-838, 1045-1047, 2288-2290; cf. Tr. 550, 841-842). On about ten occasions during the next three years, Baggett advised Stevens to expedite petitioner's zoning applications through the Park and Planning Commission (Tr. 922-924). Stevens successfully executed many of these requests (Tr. 920, 928-929).

Between 1962 and 1968 a steady stream of petitioner's zoning applications came before Baggett and his colleagues for final decision. The record reveals only one instance during that period in which

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cember 1965, shortly before petitioner sold the apartment complex. At the time Baggett moved in, the furnishings were in excellent condition and nothing had been removed (Tr. 1489, 1494-1496, 1508-1510, 1519-1520, 1522, 1531, 1562-1570).

One of petitioner's employees testified that a few pieces of identical furniture were located in petitioner's beach house in January 1972 (Tr. 2575-2590), but the defense did not establish whether this furniture had come from Baggett's apartment or from another model apartment furnished by the same decorator at one of petitioner's other projects (Tr. 1454).

Baggett voted against an application by petitioner.[8] Eight of petitioner's applications were pending on December 23, 1964, when petitioner signed the $3,500 check to purchase Baggett's tractor. During the preceding week the Maryland National Park and Planning Commission had recommended to the Board that two of these applications be denied (G. Ex. 266 A) and had given another application an unfavorable report (G. Ex. 266 B). Nevertheless, these three applications were all approved by the Board within three months after the purchase of the tractor; the deciding vote on one of these applications was cast by Baggett (G. Ex. 266 B). On another occasion, in May 1966, Baggett ordered that the Board of County Commissioners consider three of petitioner's zoning applications, the hearings to be held the day after a newly proposed zoning classification desirable to petitioner would first be available (D. Ex. 120-C).

ARGUMENT

1. Petitioner contends (Pet. 22-27) that the court of appeals should have certified unresolved issues of

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[8] In 1963, over a year before he received the tractor, Baggett voted against petitioner's application for high-rise zoning on property in Hyattsville. This application was strongly opposed by community organizations in the area and had been unanimously condemned by the Hyattsville city council. In December 1968 Baggett voted against several of petitioner's applications, but this reversal in policy occurred about three months after petitioner learned that the purchase of the tractor was the subject of a criminal investigation by the Internal Revenue Service (Tr. 2977).

Maryland bribery law to the highest court of that state, pursuant to the Maryland Uniform Certification of Questions of Law Act,[9] which authorizes the Maryland Court of Appeals, upon request from a federal appellate court, to decide questions of state law which may be determinative of a federal case and as to which there appears to be no clear precedent in state court decisions. Petitioner's argument is apparently that a violation of state law is a prerequisite to a conviction under the Travel Act, 18 U.S.C. 1952,[10] and that (according to his interpretation of Maryland bribery law) the government failed to prove certain elements of the state offense—including the requirements that there be an actual bribery agreement and that the bribe be given in exchange for a specific act. The court of appeals properly determined that certification was unnecessary.

Under the Travel Act, once sufficient interstate activity is shown, the government need not prove that the underlying state offense was consummated, but merely that the defendant acted "with intent to * * *

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[9] The certification statute, Ann. Code of Md., Art. 26, §§ 159-170 (1972), went into effect while petitioner's case was pending in the court of appeals.

[10] The Travel Act, 18 U.S.C. 1952, applies, in pertinent part, to "[w]hoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to * * * promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity," defined to include "bribery * * * in violation of the laws of the State in which committed * * *."

facilitate the promotion" of the state offense.[11] See *United States* v. *Rizzo*, 418 F. 2d 71, 74, 79-80 (C.A. 7); *McIntosh* v. *United States*, 385 F. 2d 274, 276-278 (C.A. 8). As the district court instructed the jury on this matter—without objection by petitioner on grounds of his alleged state law defenses—the evidence for conviction is sufficient if it is found that petitioner intended to influence Baggett in the performance of his official duties with respect to petitioner's zoning applications then or thereafter pending. This instruction comports with the requirements for conviction under not only the Travel Act, but also the Maryland bribery statute, which is applicable to anyone who "shall bribe or attempt to bribe any * * * officer * * * of any county * * * in order to influence * * * such officer * * * in the performance of any of his official duties * * *." Ann. Code of Md., Art. 27, § 23.

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[11] Petitioner makes the misleading assertion that the government maintained in the court of appeals that "it was unnecessary to prove that the enterprise, in aid of which the interstate facility was allegedly utilized, was unlawful under state law" (Pet. 26). However, the government argued in the court below that the Travel Act requires proof only of an act committed "with intent to * * * facilitate the promotion" of bribery under state law. Petitioner's authorities do not undermine this position. *United States* v. *Nardello*, 393 U.S. 286, on which petitioner relies (Pet. 26), held that 18 U.S.C. 1952, in prohibiting interstate travel with intent to carry on extortion in violation of state law, applies not merely to those acts actually denominated "extortion" by state statute but also to the state offense of "blackmail," which falls within the generic definition of extortion under the federal act. Nothing in *Nardello* suggests that the state crime must be consummated before federal jurisdiction may be invoked.

In any event the government did prove, consonant with petitioner's interpretation of the relevant law, that there was an actual bribery agreement relating to a specific act or acts. There was overwhelming evidence showing petitioner's motive for bribing Baggett and documenting the series of financial benefits he bestowed upon Baggett over the years. The record also strongly suggests Baggett's corrupt intent—by his acceptance of gifts from petitioner and Kahler, his votes in favor of petitioner's zoning applications, his special efforts to expedite those applications, and his instructions to Stevens to help in this process through his position at the Park and Planning Commission. Viewed in light of all the evidence, certain series of events seem especially suspect, such as the purchase of the tractor one week after certain of petitioner's applications received unfavorable recommendations by the Park and Planning Commission, and the approval of those applications by the Board only two months later.

Contrary to petitioner's assertions (Pet. 6, 23, 25), the government never "acknowledged" (Pet. 23) in the trial court that it would not prove a bribery agreement, express or implied, nor was it "conceded" (Pet. 23) that the bribe was not for specific acts. Neither, as petitioner suggests (Pet. 23), did the government state that this case involved a "novel" theory of bribery law. Rather, the record (including those parts on which petitioner relies) clearly shows that the government's position in the district court was that this case involved "a continuing relationship of

continual bribery" (Transcript of Hearing of May 7, 1970, at 82-84, 92), and that gifts such as the tractor were not payment for any single specific action, but part of a "general understanding that Baggett would help * * * [petitioner], wherever possible, as to whatever [petitioner] * * * had pending before Baggett * * *" (*id.* at 84; see *id.* at 53, 62-70, 82-84, 88, 92; Transcript of Hearing of June 4, 1970, at 26-28, 40). The official acts that Baggett was to perform pursuant to this agreement were not any less specific by virtue of the fact that they were legion.[12]

Petitioner also seems to allege (Pet. 25) a state law requirement of proof that the donor intend to receive a benefit in return which was otherwise unobtainable. He emphasizes (Pet. 25, n. 9) the government's failure to try to show that the technical merits

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[12] Petitioner states (Pet. 25) that the court of appeals rejected the argument that the bribe was for designated specific acts. Since the court, in affirming the conviction, felt it unnecessary to discuss this issue, the more likely inference is that the argument was accepted. In support of his point, petitioner extracts the statement from the court's opinion in *Baggett* that "[t]he Government's evidence did not show a specific *quid pro quo* from Baggett to Rocks in return for the $3,500 check." *United States* v. *Baggett, supra,* 481 F.2d at 115. This statement is perfectly consonant with the government's theory of petitioner's case as involving a "continuing relationship of continual bribery." As the court in *Baggett* went on to explain, the evidence showed "Baggett's corruption by the unprincipled greed of a wealthy man and Baggett's preference for favors and gifts over his public duty. The jury was clearly authorized to draw the inference and conclusion that the $3,500 check represented a payment by Rocks to Baggett for continuing favorable zoning rulings" (*ibid.*).

of petitioner's applications did not justify approval by the Board. It is quite apparent, however, that petitioner received special benefits as a result of Baggett's assistance. On several occasions Baggett himself took steps to speed petitioner's applications through the administrative process. Moreover, as petitioner's zoning expert testified (Tr. 2280-2282), zoning decisions involve political and subjective considerations as well as analyses of the technical merits. In any event, Maryland bribery law does not require that petitioner's applications would have been denied but for Baggett's influence on the Board. See *Blondes* v. *Maryland*, 16 Md. App. 165; cf. *United States* v. *Brewster*, 408 U.S. 501, 526.

In short, there was no basis for imposing a requirement that the court of appeals certify any state law issues which might reasonably have been considered dispositive of this case.

2. Petitioner contends (Pet. 17-22) that the court of appeals' decision, in holding that the interstate activity involved here was sufficient to warrant a conviction under the Travel Act, was incorrect because "[o]ther than the writing of the check [for the purchase of the tractor] in the District of Columbia, a mere happenstance, this case has no connection with any jurisdiction other than Maryland" (Pet. 21). As detailed in the statement, however, the record reveals that the corrupt relationship between petitioner and his associates was characterized by frequent and substantial interstate travel intended to facilitate the promotion of bribery. Although the

government was unable to document the precise means by which the interstate movement of petitioner's check for Baggett's tractor was accomplished, the evidence sufficiently established that either petitioner or an accomplice transported the check (or arranged for its transportation) from the District of Columbia to Harwood, Maryland. In an apparent attempt to continue the promotion of this bribery scheme, petitioner and his partner Kahler took Baggett and Stevens on at least six trips to Florida and the Bahamas between 1963 and 1967. In addition, part of the furniture which petitioner gave to Baggett in 1965 was paid for with a check that moved in interstate commerce (G. Ex. 317). We also note that petitioner's business, which he sought to promote with Baggett's help, encompassed multi-state operations. Although petitioner resided in Maryland, he had substantial real estate ventures in Virginia (Tr. 67, 1898-1899), and even his Maryland operations were directed from out of state. Between 1962 and 1967, petitioner's offices were located in the District of Columbia (in the Bender Building, where he signed the check for the tractor); his offices were thereafter moved to Alexandria, Virginia (Tr. 265).

Petitioner's reliance on *Rewis* v. *United States*, 401 U.S. 808, is misplaced. In *Rewis* this Court held that the proprietors of a lottery operation in Florida did not violate the Travel Act merely because, as they could have foreseen, some of their customers crossed the nearby Florida-Georgia border. Nor did the record in *Rewis* justify a conclusion that

the encouragement of interstate patronage was equivalent to the conduct of a principal in a criminal agency relationship; as the court observed, "we are not informed of any action by petitioners, other than actually conducting their lottery, that was designed to attract out-of-state customers." 401 U.S. at 814. Here, by contrast, the principals themselves (and perhaps their agents as well) were directly involved in a substantial course of interstate movement designed to further the illegal scheme. See *id.* at 813.

In *United States* v. *Archer*, C.A. 2, No. 73-1527, decided July 12, 1973, cited in petitioner's Supplemental Brief in Support of Petition, the government's undercover agents penetrated corrupt local activities and actually caused the bribery of a state assistant district attorney. The only interstate element was a "casual and incidental" occurrence (Supp. Pet. App. 21a)—the receipt by the defendant of a single telephone call, made by a government agent and expected but not initiated by the defendant. The court held that the "call was insufficient to transform this sordid federally provoked incident of local corruption into a crime against the United States"—a determination which made it unnecessary to consider the question "whether a communication with an undercover agent can ever meet the requirement of § 1952(a)." [13]

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[13] In reviewing the degree of interstate activity disclosed by the record, the court in *Archer* discarded other telephone calls "manufactured by the Government for the precise purpose of transforming a local bribery offense into a federal crime" (Supp. Pet. App. 19a-21a).

Nor does the instant decision conflict with *United States* v. *Altobella*, 442 F. 2d 310 (C.A. 7). In that case, no basis for federal jurisdiction was found when a Philadelphian, victimized by extortion in Chicago, chose to give the defendants cash he obtained by cashing a check drawn on a Philadelphia bank, which later cleared through the mails. The interstate use of the mails was not initiated by or even known to the defendants, was incidental to the extortion scheme, and was essentially "a matter of happenstance." *Rewis* v. *United States*, *supra*, 401 U.S. at 812. Whatever may be said about inconsistencies between *Altobella* and other decisions of the Fourth Circuit, there is no conflict with the instant case, which involved frequent interstate travel by the principals as well as *their* transportation of a check across state lines, possibly but not necessarily through use of the mails.

3. Petitioner also contends (Pet. 12-17) that some of the jurors read an allegedly prejudicial newspaper article during their deliberations and that he was denied his right to confront witnesses when, during a post-verdict hearing to determine if the article had come to the jury's attention, the district judge refused to let defense counsel cross-examine the jurors but rather undertook to question them himself. These contentions are fully answered in an opinion by the district court (Pet. App. 3a-17a), which the court of appeals incorporated into its opinion (Pet. App. 2a), and upon which we rely here. The evidence recited in the trial court's opinion was clearly sufficient to warrant its finding that none of the jurors

had read the article or been told of its content until after their verdict. Indeed, as the district court observed (Pet. App. 13a, n. 7), "[t]he disparity between the actual facts and the allegations of the motion which impelled this Court to order a post-trial hearing suggests the desirability of a rule such as that mentioned in *Miller* v. *United States* [403 F. 2d 77 (C.A. 2)], which would prohibit questioning of a juror by an attorney after a verdict except by leave of court." Nor did the district court abuse its discretion as to the manner in which the hearing was conducted. Counsel were given an opportunity to submit appropriate questions both before and after questioning of the jurors by the court. The court itself conducted the examination in order to prevent improper questioning beyond the limited scope of the inquiry. As the court found (Pet. App. 14a), the fact "[t]hat defense counsel wished to inquire into impermissible subjects in questioning the juror witnesses quite clearly appears from the questions that he submitted in advance of the hearing." In light of these circumstances the court correctly found, after proper inquiry, that petitioner's Sixth Amendment rights were not violated by any extraneous influence on the jury.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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